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Hon. Ralph R. Beistline

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Attorneys for Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

MYRNA I. JOHNSON,

Plaintiff,

v.

Case No. 1J-04-008-CV (RRB)

FRED MEYER STORES, INC., a Delaware
corporation; and JAIME SAN MIGUEL,

Defendants.

MILLER NASH LLP
ATTORNEYS AT LAW
4400 TWO UNION SQUARE
601 UNION STREET, SEATTLE WA 98101-2352
TELEPHONE (206) 622-8484

**DECLARATION OF JAMES R. DICKENS (7/20/07) IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS WRONGFUL TERMINATION CLAIM**

I, James R. Dickens, declare under oath as follows:

1. I am an attorney with Miller Nash LLP, one of the attorneys for the defendants in the above-referenced matter. I make this declaration based on my personal knowledge and the records and files herein.

2. Attached hereto as Exhibit A are true and accurate copies of pages 1, 4, 5, 124, 156, 157, 160, 219-222, 242, and Exs. 2, 4 and 18 from the deposition of plaintiff Myrna Johnson taken January 23, 2006.

DECLARATION OF JAMES R. DICKENS (7/20/07) IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS WRONGFUL TERMINATION CLAIM
Johnson v. Fred Meyer
Case No. 1J-04-008-CV
Page 1 of 3

3. Attached hereto as Exhibit B are true and accurate copies of pages 1, 3, 5, 52, 56-58, 85, 86, 89, 90, and Ex. 18 from the deposition of Fred Sayre taken on January 27, 2006.

4. These excerpts are submitted to the Court in support of defendant's contemporaneous motion to dismiss plaintiff's wrongful termination claim.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

SIGNED at Seattle, Washington, on July 20, 2007.

s/ James R. Dickens

MILLER NASH LLP
ATTORNEYS AT LAW
4400 TWO UNION SQUARE
601 UNION STREET, SEATTLE WA 98101-2352
TELEPHONE (206) 622-8484

Certificate of Service

I hereby certify that on July 20, 2007, a copy of the foregoing was served electronically on:

Mark Choate
lawyers@choatelawfirm.com

s/ James R. Dickens

DECLARATION OF JAMES R. DICKENS (7/20/07) IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS WRONGFUL TERMINATION CLAIM
Johnson v. Fred Meyer
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Exhibit B	Fred Sayre deposition transcript pages	1-12

MILLER NASH LLP
ATTORNEYS AT LAW
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DECLARATION OF JAMES R. DICKENS (7/20/07) IN SUPPORT OF
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Page 3 of 3

Page 1

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

MYRNA I. JOHNSON,

Plaintiff,

v.

FRED MEYER STORES, INC.,
a Delaware corporation;
and JAIME SAN MIGUEL,

Defendants.

Case No. J04-008 CV

DEPOSITION OF MYRNA JOHNSON
Pages 1 through 264, Inclusive
Taken: Monday, January 23, 2006
Place: Juneau, Alaska

Myrna Johnson * 1/23/2006
Johnson v. Fred Meyer * J04-008 CV (JWS)

Page 4

1 A P P E A R A N C E S:

2

3 For the Plaintiff: CHOATE LAW FIRM LLC
4 Mark Clayton Choate, Esq.
5 Jessica Srader, Esq.
6 424 North Franklin Street
7 Juneau, AK 99801

8

9 For the Defendants: MILLER NASH LLP
10 James R. Dickens, Esq.
11 4400 Two Union Square
12 601 Union Street
13 Seattle, WA 98101

14

15 Also present: Jaime San Miguel

16

17 BE IT REMEMBERED that, pursuant to Notice of
18 Taking Deposition, and beginning on Monday, the 23rd
19 day of January, 2006, commencing at the hour of 9:00
a.m. thereof, in the offices of the Choate Law Firm,
located at 424 North Franklin Street, Juneau, Alaska,
before me, LYNDA BATCHELOR BARKER, Registered Diplomate
Reporter and Notary Public in and for the State of
Alaska, personally appeared:

20

21 MYRNA JOHNSON

22

23 called as a witness by the defendant, who was
24 thereafter examined and interrogated as hereinafter set
25 forth.

Myrna Johnson * 1/23/2006
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1 A. In 30 days.

2 Q. All right. But you weren't being
3 suspended, were you?

4 A. No.

5 Q. You weren't being fired?

6 A. No.

7 Q. All right. And that's consistent with
8 the normal procedure to give, first of all, a
9 verbal warning with a written documentation, if you
10 want an employee to improve, was it not?

11 A. He didn't give me a verbal warning.

12 Q. Well, he read you -- that's a verbal
13 warning, because he didn't ask you to sign it, did
14 he?

15 A. He wants me to sign it.

16 Q. Now, wait a minute. At the time he
17 first read it to you, isn't it true he never asked
18 you to sign it?

19 A. No, sir. He asked me to sign it.

20 Q. At the beginning?

21 A. He have a pen, and he was reading it,
22 and he was telling me to sign it. He have a pen in
23 his hand.

24 Q. Well, having a pen in his hand -- are
25 you testifying that it is your recollection

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1 A. No. Except if -- I don't know if you
2 consider like the Office Vision that he send me, as
3 part of those.

4 Q. Anything.

5 A. Okay. Then I have some.

6 Q. Let me just tell you what I'm talking
7 about so we're clear. Any documents which relate
8 to your employment at Fred Meyer, such as Fred
9 Meyer Employee Responsibilities forms, or
10 paychecks, or benefit plans, or Office Visions, or
11 Fred Meyer personnel policies, or anything else --
12 do you have such a set of documents?

13 A. I have a few on those that you mention.
14 I have the Office Vision, so yes.

15 Q. All right. And where are those?

16 A. I gave it to my lawyer.

17 Q. All right. Is there anything that you
18 have in your possession or under your control, or
19 in a safety deposit box, that you have not given to
20 your attorney that relates to Fred Meyer?

21 A. I understand your question. No, sir, I
22 don't.

23 Q. All right. Let's go back to the
24 Exhibit 2.

25 There is a heading, Roman I,

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1 "Employee conduct which will result in immediate
2 termination without prior warning." And the first
3 one is "Dishonesty of any kind on or off the job."
4 And you understood that was a basis for immediate
5 termination, did you not?

6 A. Yes, sir.

7 Q. Okay. Under 1, Section 6,
8 insubordination is also conduct that will result in
9 immediate termination. Did you understand that?

10 A. Yes, sir.

11 Q. And then down under Item III, it has
12 got a heading, "The following conduct is regarded
13 and accepted as an employee's voluntary
14 resignation (quit) of his or her employment."
15 Number 1, "Walking off of the job." Did you
16 understand that?

17 A. Yes, sir.

18 Q. Section III, paragraph 4, "Failure to
19 return to work from an approved leave of absence as
20 scheduled." That's also a basis for concluding
21 that you have voluntarily quit. Did you understand
22 that?

23 A. Yes, sir.

(Exhibit 3 duly marked)

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1 Q. All right.

2 (Exhibit 4 duly marked)

3 BY MR. DICKENS:

4 Q. Ms. Johnson, can you identify
5 Exhibit 4, please?6 A. Yes, sir.7 Q. what is it?8 A. This is our Employee Responsibilities,
9 same as the other exhibit.10 Q. But just signed on April 1, 1997?11 A. Yes.12 Q. Any different understanding about this
13 one than the prior one? I'm sorry. Did you
14 understand my question?

15 A. I didn't understand what you say.

16 Q. Well, between the sneezing -- I'll try
17 again.18 Ms. Johnson, with regard to No. 4,
19 is your understanding of the information on it the
20 same as for Exhibit 2, that first Employee
21 Responsibilities form?22 A. I understand, sir. Yes.

23 Q. Okay.

24 MR. DICKENS: Mark this, please.

25 (Exhibit 5 duly marked)

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1 BY MR. DICKENS:

2 Q. Ms. Johnson, for the record, would you
3 please identify Exhibit 18?

4 A. This is the Employee Warning Notice.

5 Q. Is this the one we discussed earlier
6 that Mr. San Miguel read to you when you were in
7 the meeting with him and Mr. Sayre?

8 A. Yes, sir.

9 Q. And had you ever issued one of these to
10 another employee?

11 A. Yes.

12 Q. Had you ever recommended that someone
13 else above you issue one of these to another
14 employee?

15 A. Yes, sir.

16 Q. And what is the purpose?

17 A. The Employee Warning Notice is to make
18 sure that the employee understand that, if they do
19 not -- that there is some -- their performance is
20 not up to the standard, and they are given enough
21 time to put it up to the standard, or else they
22 will either be sometimes suspended or demoted or
23 terminated.

24 Q. Now, as you remember it, did
25 Mr. San Miguel read each of the handwritten and

Myrna Johnson * 1/23/2006
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1 printed sections on this Employee Warning Notice?

2 A. Excuse me, sir?

3 Q. Sure. As you recall, Ms. Johnson, did
4 Mr. San Miguel read to you each of the printed and
5 handwritten responses or comments on this Employee
6 warning Notice?

7 A. Yes, sir.

8 Q. All right. So for Item 1, it says,
9 preprinted, "State exactly where, when, and what
10 employee did or said to incur this notice." And
11 dates of infraction -- it is written, if I can read
12 this correctly, like 3-13 through 3-17, 2002. Is
13 that what you understand it to say?

14 A. Yes.

15 Q. And it says, "Myrna didn't complete her
16 hours worked as directed by the manager. ALE
17 department recovery is not getting done at night."

18 A. He said "Myrna didn't complete her tour
19 work as directed by the manager."

20 Q. Tour work.

21 A. "ALE department recovery is not getting
22 done at night.

23 Q. Let me stop you there. Hold on.

24 That's what he wrote there, and he read that to
25 you?

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1 A. Yes, sir.

2 Q. And that's what he had been telling you
3 previously in those OVS that we just reviewed;
4 isn't that right?

5 A. Yes, sir.

6 Q. And you concurred that was his opinion
7 at that time, right?

8 A. Yes.

9 Q. And the second one, the printed
10 statement is "State exactly what performance is
11 expected of the employee in the future and steps to
12 be taken to improve or correct performance." And
13 he wrote, "Myrna is expected to complete all tasks
14 assigned by the manager. All work done need to" --

15 A. "All work done need to conform to Fred
16 Meyer standard."

17 Q. Go ahead and finish it.

18 A. "Manager to write daily tour for Myrna
19 to complete. These tours need to be turned in
20 every day for manager review."

21 Q. Okay. And so this is consistent with
22 the comments that Mr. San Miguel had been making to
23 you about the tour wasn't getting done, and he
24 wanted to get it done; isn't that right?

25 A. Yes, sir.

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1 Q. And the next section, 3, the printed
2 statement is: "Is the employee being suspended
3 without pay for this infraction?" It says "Circle
4 One," and it's circled "No."

5 So you understood you were not
6 being suspended, didn't you?

7 A. Yes, sir.

8 Q. Okay. And reading Question 4, it says,
9 "State what form of discipline the employee may
10 expect for failure to comply with this
11 rule/standard in the future." And he's written,
12 "If Myrna doesn't show any improvement in the next
13 30 days, she'll be removed from her position as an
14 ALE assistant manager." So that's what he read to
15 you?

16 A. Yes, sir.

17 Q. So what you heard is, you knew you had
18 30 days to bring up your performance to the
19 standards that Mr. San Miguel thought should be
20 achieved; isn't that right?

21 A. No, sir.

22 Q. "No, sir," what? You didn't think you
23 had 30 days?

24 A. He mean 30 days.

25 Q. Yes.

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1 Q. Didn't you tell her on April 30, 2002,
2 about a month after you left Fred Meyer, that,
3 "When I left the meeting with Mr. Sayre and
4 Mr. San Miguel, I felt I had quit my job"?

5 A. I was so embarrassed to say I was
6 fired, sir. Even now, I -- because --

7 Q. My question is, isn't that what you
8 told Erin Collins on April 30, 2002, "When I left,
9 I felt I had quit my job"?

10 A. If that is what says, the paperwork
11 says.

12 Q. Well, that's what it does say. I'm
13 asking if you did say that?

14 A. Yes.

15 MR. DICKENS: Would you mark that,
16 please?

17 (Exhibit 22 duly marked)

18 BY MR. DICKENS:

19 Q. Ms. Johnson, can you identify
20 Exhibit 22, please?

21 A. This is -- I typed this to recall what
22 happened from March 12 to March 18.

23 Q. Okay. When did you prepare it?

24 A. After I found out that -- on the 20th.

25 Q. Well, when after the 20th?

ATTACHED

FRED MEYER EMPLOYEE RESPONSIBILITIES

The majority of the firm's employees are successful in their jobs. They realize that following company policies and procedures are essential to their own best interest and to the success of the firm. In fairness to all concerned, you need to know and understand the principal reasons for the action utilized below:

I Employee Conduct Which Will Result In Immediate Termination Without Prior Warning:

1. Dishonesty of any kind—ON OR OFF THE JOB. Some examples:
 - a. Unauthorized conversion to personal use or removal of company money, merchandise, or other property from company premises; committed alone or in conjunction with another person(s).
 - b. Giving or receiving unauthorized credit or price discounts on merchandise sold or purchased in our stores. Unauthorized price discounts would include "AD" prices when such are NOT available to the public.
 - c. "Grazing" or consuming merchandise without prior payment. This also includes distressed and salvage merchandise regardless of condition.
 - d. Placing unpaid for merchandise in pocketbooks, pockets, or any other place of possible concealment.
 - e. Falsification of company records—this includes time cards and time sheets.
 - f. Making or accepting any unauthorized long distance telephone calls.
2. Failure to Record Sales on the Cash Register. Clarification:
 - a. All customers' purchases must be recorded on the cash register at the correct selling price. Individual customer sales must be recorded as separate transactions. Do not combine or "bunch" sales.
 - b. If a customer leaves the correct amount of money for his/her purchase while you are waiting on another customer, you are to record the departed customer's money (purchase) immediately after completing transaction of present customer.
 - c. Each customer is to be offered a cash register or change receipt for the exact amount of his/her purchase.
3. Reporting for work under the influence of alcoholic beverages or unlawful narcotics or drugs; or consuming or possessing alcoholic beverages or unlawful narcotics or drugs during your work shift or on company premises.
4. Negligence in handling of cash and/or negotiable instruments which results in a loss to the company.
5. Deliberate destruction of company or employee's property; or any reckless act which results in a loss to the company or injury to an employee or customer.
6. Insubordination, such as willfully disobeying the instructions of an authorized person-in-charge, or disrespectful conduct toward a supervisor or person-in-charge.
7. Gross discourtesy to a customer.
8. Conviction of a crime directly or indirectly related to the company, its employees, or its property, or one which affects the employee's ability to perform his or her duty.
9. Ringing up your own or your immediate family's purchases. Processing your own or your immediate family's check(s), any negotiable instrument(s) (or any transaction involving a purchase, refund or layaway). Immediate family also includes non-relatives living in the same household.
10. Failure to sign the Sales Data Card and failure to record your employee identification number on registers where I.D. is required.
11. Other employment-related misconduct which is determined by the company to be of an equally serious nature.

II Employee Conduct Which Will Result In Disciplinary Action But Which Usually Results In Termination After Prior Warning:

1. Failure to perform work as required.
2. Customer complaints.
3. Failure to comply with written company policies and procedures. Some examples:
 - a. Working "free time" or working overtime without specific approval of the person-in-charge.
 - b. Violation of company safety policies and procedures.
4. Any conduct which otherwise interferes with or obstructs the normal operation of business. Some examples:
 - a. Excessive tardiness or absenteeism.
 - b. Giving out of confidential business information.
 - c. Upon notice from the company, failure of an employee to immediately make good a bad check(s) or charge(s) drawn on the employee's account.
5. Negligence in handling cash and/or negotiable instruments even though such negligence does not result in a loss.

III The Following Conduct Is Regarded And Accepted As An Employee's Voluntary Resignation (Quit) Of His/Her Employment:

1. Walking off the job.
2. Refusal to work a scheduled shift.
3. Failure to personally notify the P.I.C. of an absence prior to the scheduled work shift. (First incident—3 day suspension)
4. Failure to return to work from an approved leave of absence as scheduled.
5. Failure to return to work when called back from lay-off.

EMPLOYEE ACKNOWLEDGEMENT

I acknowledge that I have read and understand the above principal causes for discharge, disciplinary action and resignation. I have clarified any questions with my immediate supervisor, Trainer or the Personnel Department and understand this summary does not constitute an employment contract.

Employee Myrna J. Johnson Date 12-02-92
 PLEASE PRINT NAME

Employee Signature Myrna Johnson

2
200010

Location Juneau, Alaska Department pharmacy
 M-1398 12/88 19 Distribution: WHITE ORIGINAL—Personnel; CANARY COPY—Store/plant File; PINK COPY—Employee

Exhibit A Page 13 of 15

1/23/06
Myrna Johnson
Lynda Batchelder Barker, RDR
1 page
Exhibit
Witness

FRED MEYER EMPLOYEE RESPONSIBILITIES

STAFFER

The majority of the firm's employees are successful in their jobs. They realize that following company policies and procedures are essential to their own best interest and to the success of the firm. In fairness to all concerned, you need to know and understand the principal reasons for the action outlined below:

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 - a. Unauthorized conversion to personal use or removal of company money, merchandise, or other property from company premises; committed alone or in conjunction with another person(s).
 - b. Giving or receiving unauthorized credit or price discounts on merchandise sold or purchased in our stores. Unauthorized price discounts would include "AD" prices when such are NOT available to the public.
 - c. "Grazing" or consuming merchandise without prior payment. This also includes distressed and salvage merchandise regardless of condition.
 - d. Placing unpaid for merchandise in pocketbooks, pockets, or any other place of possible concealment.
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 - b. If a customer leaves the correct amount of money for his/her purchase while you are waiting on another customer, you are to record the departed customer's money (purchase) immediately after completing transaction of present customer.
 - c. Each customer is to be offered a cash register or change receipt for the exact amount of his/her purchase.
3. Reporting for work under the influence of alcoholic beverages or unlawful narcotics or drugs; or consuming or possessing alcoholic beverages or unlawful narcotics or drugs during your work shift or on company premises.
4. Negligence in handling of cash and/or negotiable instruments which results in a loss to the company.
5. Deliberate destruction of company or employee's property; or any reckless act which results in a loss to the company or injury to an employee or customer.
6. Insubordination, such as willfully disobeying the instructions of an authorized person-in-charge, or disrespectful conduct toward a supervisor or person-in-charge.
7. Gross courtesy to a customer.
8. Conviction of a crime directly or indirectly related to the company, its employees, or its property, or one which affects the employee's ability to perform his or her duty.
9. Ringing up your own or your immediate family's purchases. Processing your own or your immediate family's check(s), any negotiable instrument(s) (or any transaction involving a purchase, refund or layaway). Immediate family also includes non-relatives living in the same household.
10. Failure to sign the Sales Data Card and failure to record your employee identification number on registers where I.D. is required.
11. Other employment-related misconduct which is determined by the company to be of an equally serious nature.

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 - b. Violation of company safety policies and procedures.
4. Any conduct which otherwise interferes with or obstructs the normal operation of business. Some examples:
 - a. Excessive tardiness or absenteeism.
 - b. Giving out of confidential business information.
 - c. Upon notice from the company, failure of an employee to immediately make good a bad check(s) or charge(s) drawn on the employee's account.
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EMPLOYEE ACKNOWLEDGEMENT

I acknowledge that I have read and understand the above principal causes for discharge, disciplinary action and resignation. I have clarified any questions with my immediate supervisor, Trainer or the Personnel Department and understand this summary does not constitute an employment contract.

Employee Myrna Johnson Date 7/19/07
 PLEASE PRINT NAME

Emp. # Signature Myrna Johnson

Location JN/ALB Department ALE
 M-1398 12/88 Distribution: WHITE ORIGINAL—Personnel; CANARY COPY—Store/plant File; PINK COPY—Employee

Exhibit 4 Date 12/31/06

Witness Myrna Johnson Lynda Batchelor Barker, RDR 1 page 200023

Exhibit A Page 14 of 15

Employee Warning Notice

(Please Print)

LOC: 158

PR SECTION: ALC

Johnson

Myrna

Employee Number: 276177

Last Name

First

Middle

You are hereby notified that your employment performance is unsatisfactory in the following respects. Improvement must be made for you to continue your employment with Fred Meyer, Inc.

1. State exactly where, when and what employee did or said to incur this notice. YES NO

Date(s) of infraction: 3/13 - 3/17, 19 2002 Prior verbal warnings?

- Myra didn't complete her task work as directed by the manager.

- MLC Dot Recovery is not getting done at night.

2. State exactly what performance is expected of the employee in the future and steps to be taken to improve or correct performance: Myra is expected to complete all basic

ASSIGNMENT by the manager. all work done need to conform to Fred Meyer standards. Mgr to write Daily Task for Myra to complete, these tasks need to be turn in every day for Mgr review.

3. (a) Is the employee being suspended without pay for this infraction? (circle one) YES NO

(b) If YES - Give beginning date: ending date:

4. State what form of discipline the employee may expect for failure to comply with this rule/standard in the future.

If Myra rules still show any improvement in the next 30 days...she'll be removed from her position as a MLC Assistant.

5. State the employee's remarks after this notice was issued.

It is our sincere desire that your performance attain a satisfactory level so no further action will be necessary.

Employee's Signature (optional):

Manager's Signature:

Title: ALC Mgr

Witness:

Today's Date: 3/18/2002 18

INSTRUCTIONS: PLEASE READ AND FOLLOW CAREFULLY.

1. This four-part notice is to be used for recording all details of an employee's failure to comply with part(s) of company policies, procedures and/or standards. **Exhibit A Page 15 of 15**
2. All areas of this notice must be completed as fully as possible. Lacking such completion may compromise the validity of this warning notice.
3. Review the Employee Responsibilities Form (M-1398) with the employee and have him/her sign a new one and attach to the respective copies of this notice. DO NOT highlight, underline or mark beside any of the issues on the form. Marking on or altering the form may compromise its usefulness.

- A. FIRST (white) copy to be sent immediately to Human Resources/MO HRD.
- B. SECOND (yellow) copy to be kept with supervisor's files.
- C. THIRD (pink) copy to be given to employee.

Exhibit
Witness

18 1/23/06
300136

Myrna Johnson

Lynda Batchelor Barker, RDR
1 mao

Page 1

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

MYRNA I. JOHNSON,

Plaintiff,

v.

FRED MEYER STORES, INC.,
a Delaware corporation;
and JAIME SAN MIGUEL,

Defendants.

Case No. J04-008 CV (JKS)

VIDEOTAPED DEPOSITION OF FRED SAYRE
Pages 1 through 105, Inclusive
Taken: Friday, January 27, 2006
Place: Juneau, Alaska

Fred Sayre * 1/27/2006
Johnson v. Fred Meyer * J04-008 CV (JWS)

Page 3

1 A P P E A R A N C E S:

2

3 For the Plaintiff: CHOATE LAW FIRM LLC
4 Mark Clayton Choate, Esq.
5 Jessica Srader, Esq.
6 424 North Franklin Street
7 Juneau, AK 99801

8

9 For the Defendants: MILLER NASH LLP
10 James R. Dickens, Esq.
11 4400 Two Union Square
12 601 Union Street
13 Seattle, WA 98101

14

15 BE IT REMEMBERED that, pursuant to Notice of
16 Taking videotaped Deposition, and beginning on Friday,
17 the 27th day of January, 2006, commencing at the hour
18 of 9:07 a.m. thereof, in the offices of the Choate Law
19 Firm, located at 424 North Franklin Street, Juneau,
Alaska, before me, LYNDA BATCHELOR BARKER, Registered
Diplomatic Reporter and Notary Public in and for the
State of Alaska, personally appeared:

20

21

FRED SAYRE

22

23 called as a witness by the plaintiff, who was thereafter
24 examined and interrogated as hereinafter set forth.

25

Fred Sayre * 1/27/2006
Johnson v. Fred Meyer * J04-008 CV (JWS)

Page 5

1 Can I have you raise your right
2 hand for me, please?

3 (Oath administered)

4 THE WITNESS: I do.

5 THE REPORTER: Thank you. You may
6 proceed.

7

8 FRED SAYRE

9

10 having been first duly sworn by the court reporter to
11 tell the truth, the whole truth, and nothing but the
12 truth, testified as follows:

13

14 EXAMINATION

15

16 BY MR. CHOATE:

17 Q. Good morning, Mr. Sayre.

18 A. Good morning.

19 Q. we know each others from -- our
20 daughters went to school together, right?

21 A. Correct.

22 Q. Okay. Have you ever been deposed
23 before?

24 A. No.

25 Q. Okay. So this is your first time?

**Fred Sayre * 1/27/2006
Johnson v. Fred Meyer * J04-008 CV (JWS)**

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1 and that kind of stuff.

2 Q. Did she, at some point, begin crying?

3 A. I believe so.

4 Q. Okay. And in terms of crying, did it
5 appear that she was emotionally upset?

6 A. Yeah.

7 Q. I mean, did it look like she was -- she
8 was faking it, or did it look like she was
9 really --

10 A. No, she was --

11 Q. -- really upset?

12 A. She looked like she was upset and mad.

13 Q. And did she begin crying at any certain
14 phase, or did she -- of the conversation?

15 A. I can't remember when she started
16 crying.

17 Q. Okay. And when she began crying, what
18 did Mr. San Miguel say?

19 A. I don't know -- remember what Jaime
20 said. I think I said, "well, let's wait a second
21 here," if I remember right. And then during that
22 time, I believe she said, "I should just quit," and
23 I said, "No, that's not what we want." I remember
24 saying that. "No, we don't want you to quit." We
25 are all meeting and --

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1 BY MR. CHOATE:

2 Q. Do you understand that that is one of
3 Ms. Johnson's allegations, is that he set her up so
4 that when she met with you, she would break down?

5 A. No, I didn't.

6 Q. You don't understand that?

7 A. I don't understand that.

8 Q. Okay. Now, you told her that if she
9 left the room, that that would be walking off the
10 job, and that would end her job?

11 A. Yes. That would be a voluntary
12 resignation.

13 Q. When she walked out of the room, was
14 she crying?

15 A. I don't remember if she was crying or
16 not.

17 Q. Okay. Do you remember hearing her
18 outside your room crying as she left?

19 A. Not -- not that I'm aware of.

20 Q. Okay. She left for some period of
21 time, and then did she return?

22 A. I believe she returned to ask for the
23 notice that was --

24 Q. That's No. 18 there?

25 A. Yes, this one.

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1 Q. Okay. Now, when -- before she left,
2 did you or Mr. San Miguel ask her to sign that
3 notice?

4 A. I didn't ask her to sign it, no.

5 Q. Was it your intention to have her sign
6 it?

7 A. If we were to give her the verbal
8 warning, yes.

9 Q. Well, what -- were you not going to
10 give her a verbal warning?

11 A. We never got to the chance to do it.

12 Q. Was it your intention, though, to give
13 her the verbal warning?

14 A. Yes.

15 Q. So it was your intention to give her a
16 verbal warning, No. 18, and have her sign it?

17 A. Yeah.

18 Q. Okay. Now, she came back and she asked
19 for a copy. At that -- yes?

20 A. Yes.

21 Q. Okay. At that point in time, did
22 Mr. San Miguel ask her to sign it? Do you recall?

23 A. I don't recall.

24 Q. Okay. Did you ask her to sign it?

25 A. Not that I recall.

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1 Q. Okay. Did you give her a copy?2 A. I do believe so, yes.3 Q. Okay. It was you that gave her a copy,
4 not Mr. San Miguel; isn't that right?5 A. I gave her a copy.6 Q. Okay. Did you subsequently inform Fred
7 Meyer corporate that Ms. Johnson had walked off the
8 job?9 A. Yes, I did.10 Q. Okay. Did you make any efforts or
11 attempts after that to talk to her, to find out
12 what had happened in that session?13 A. Generally, I don't, no. I have had
14 people walk out before, and I didn't pursue them
15 before.16 Q. So the fact that she had worked for
17 nine, nine-and-a-half years for your company and at
18 least in the six prior days had worked something
19 like 65, 66 hours, that didn't give her, in your
20 mind, any expectation that someone would say, "Hey,
21 look. Are you having a bad day? What is going on?
22 Did we not approach this right?" Didn't do that,
23 did you?

24 A. No, I did not.

25 Q. Okay. Now, do you recall, at some

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1 A. She got upset when he started -- I
2 don't know if he was reading this or started
3 talking to her more about it. She got more upset
4 and said, "Well, I ought to just quit." And that's
5 when I reminded her, "No, we are here talking about
6 this. We don't want you to do that. That's
7 definitely not what we want. You are a long-term
8 employee, and we want you -- if you do walk out,
9 then that's your -- you know, if you walk out, it
10 is a voluntary resignation. I just want to remind
11 you of that."

12 Q. Did she respond to that comment?

13 A. She calmed down. She didn't really
14 respond. She just kind of looked at me, if I
15 remember right, and calmed down. And then she got
16 upset again, once Jaime was going more into this,
17 and then she ended up walking out the door.

18 Q. Did you make any other comments to her
19 about not walking out?

20 A. I believe Jaime did and myself. "No,
21 we don't -- we are here talking to you. We don't
22 want you to leave."

23 Q. Okay. What did you expect would be the
24 result of that conference with Ms. Johnson?

25 A. That she would understand where Jaime

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1 was coming from, what the expectations of the store
2 were, and for her, the outcome of her to succeed.
3 That's what you want your employees to do.

4 Q. Now, was the Employee Warning Notice a
5 termination of Ms. Johnson?

6 A. No.

7 Q. And Mr. San Miguel had no authority to
8 terminate her, did he?

9 A. No.

10 Q. what was your reaction when she got up
11 and walked out the door?

12 A. I was -- well, shocked and saddened. I
13 mean, I didn't have any kind of -- you just look at
14 somebody walk out the door, and you don't know what
15 you did to -- to prompt that.

16 Q. Did you think that either you or
17 Mr. San Miguel took any action or made any comments
18 that reasonably would result in the employee
19 getting up and leaving?

20 A. No.

21 Q. Did you and Mr. San Miguel talk to each
22 other, then, after she left, about your reaction?

23 A. About our reaction?

24 Q. Yes.

25 A. Yeah.

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1 what you told us here today?

2 A. Correct.

3 Q. And then what response or comment did
4 she make?

5 A. She said, "It sounds like that she
6 voluntarily resigned her position."

7 Q. And did she tell you to take any other
8 action?

9 A. No.

10 Q. Did she say she was going to take any
11 action regarding paperwork?

12 A. I believe she was going to put in the
13 resignation, yes.

14 Q. All right. Now, did you play any role
15 in the decision, when an employee like Ms. Johnson
16 leaves, as to whether or not she's eligible for
17 rehire?

18 A. I don't play in that role. That's
19 something corporate does.

20 Q. Well, did you make any recommendation
21 to Ms. Lucas that Myrna Johnson not be eligible for
22 rehire?

23 A. No, I did not.

24 Q. would you have been happy to have her
25 come back, if she'd come back and sought

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1 reemployment?

2 A. Yes.

3 Q. Did she do that?

4 A. No.

5 Q. Did she ever get in touch with you?

6 A. No.

7 Q. Never even called and said, "I'm sorry,

8 I lost it. I really don't want to leave Fred

9 Meyer. I'd like to continue my career at Fred

10 Meyer"?

11 A. Not that I'm aware of, no.

12 Q. Do you have any information that she
13 got in touch with anyone else at Fred Meyer about
14 returning?

15 A. Not that I'm aware of.

16 Q. Was the first you heard of any
17 complaint on behalf of Ms. Johnson, when you
18 received the letter from the attorney that was
19 previously marked?

20 A. Yes.

21 Q. Okay. And did you have any other
22 involvement in responding until the lawsuit, and
23 you started being interviewed?

24 A. No.

25 Q. All right. Mr. Sayre, did you play any

Employee Warning Notice

(Please Print)

LOC: 158

PR SECTION: ACE

Johnson

Myrna

Employee Number: 276177

Last Name

First

Middle

You are hereby notified that your employment performance is unsatisfactory in the following respects. Improvement must be made for you to continue your employment with Fred Meyer, Inc.

1. State exactly where, when, and what employee did or said to incur this notice. YES NO

Date(s) of Infraction: 3/13 - 3/17 to 2002 Prior verbal warnings?

- Myrna didn't complete her house work as directed by
the manager.
- All DOT recovery is not getting done at night.

2. State exactly what performance is expected of the employee in the future and steps to be taken to improve or correct performance: Myrna is expected to complete all basic

assignments by the manager. All work done need to submit to Fred Meyer standards: Mgr to write daily tour for Myrna to complete, these tour need to be turn in - every day for Mgr review.

3. (a) Is the employee being suspended without pay for this infraction? (circle one) YES NO

(b) If YES - Give beginning date: _____ ending date: _____

4. State what form of discipline the employee may expect for failure to comply with this rule/standard in the future.

If Myrna doesn't show any improvement in the next
30 days she'll be removed from her position as an ACC
Asst Mgr.

5. State the employee's remarks after this notice was issued.

.....

It is our sincere desire that your performance attain a satisfactory level so no further action will be necessary.

Employee's Signature (optional): _____

Manager's Signature: _____ Title: ACE Mgr

Witness: _____ Today's Date: 3/18/2002 18

Exhibit B Page 12 of 12

INSTRUCTIONS: PLEASE READ AND FOLLOW CAREFULLY.

- This four-part notice is to be used for recording all details of an employee's failure to comply with part(s) of company policies, procedures and/or standards.
- All areas of this notice must be completed as fully as possible. Lacking such completion may compromise the validity of this warning notice.
- Review the Employee Responsibilities Form (M-1398) with the employee and have him/her sign a new one and attach to the respective copies of this notice. DO NOT highlight, underline or mark beside any of the issues on the form. Marking on or altering the form may compromise its usefulness.

A. FIRST (white) copy to be sent immediately to Human Resources/MO HRD.

Exhibit

Witness

18 1/23/04
Date 300136

B. SECOND (yellow) copy to be kept with supervisor's files.

Myrna Johnson